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IN THE

SUPREME COURT OF THE UNITED STATES

CHARLES E. MOORMAN and
EARLINE B. MOORMAN, his wife,
Petitioners,

v.

WILLIAM T. THOMAS, OLIVE R. THOMAS,
and WILLIAM T. THOMAS, JR.,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

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ATTORNEYS FOR PETITIONERS

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Come now the Petitioners, Charles E. Moorman and Earline B. Moorman, his wife, by their undersigned attorneys, and respectfully request this Honorable Court to issue its most gracious Writ of Certiorari directed to the Supreme Court of Florida regarding its decision in the above cause and respectfully represent unto the Court, as follows:

1. That the official reports of the above cause are in the District Court of Appeal of Florida, First District, 192 So2d 320, (1966) and in the Supreme Court of Florida 199 So2d 719 (Fla. 1967).

2. The grounds upon which jurisdiction of the Court is sought to be invoked in the above cause are as follows:

(a) The decision of the Supreme Court of Florida to which certiorari is sought is believed to construe erroneously the de-

cision of this Court in the case of LeMaistre v. Leffers, 333 U.S. 1, 92 L. Ed, 429, 68 S Ct 372 (1948) and also said decision denies to Petitioners the equal protection of the laws in the exercise of a Federal right in the courts of the State of Florida, contrary to Amendment 14, Section 1, United States Constitution.

3. The decision of the Supreme Court of Florida in the above cause to which certiorari is sought was dated and entered June 7, 1967.

4. The statutory provision believed to confer jurisdiction upon this Honorable Court to review by certiorari the aforesaid judgment of the Supreme Court of Florida is Section 1257(3) 28 USCA. (Section 1257(3) Title 28, U.S. Code, 1964, Vol. 7, p. 5959.)

5. The questions presented for review to this Honorable Court are as follows:

(1) Does the decision of the Supreme Court of Florida, rendered in the above cause June 7, 1967, holding under the decision of this Court in LeMaistre v. Leffers, 333 US 1, 92 L Ed 429, 68 S Ct 372, (1948) the tax deed issued on Petitioner Charles E. Moorman's real property in 1945, while said Petitioner was in the military service of the United States, and under the protection of Section 205 of the Soldiers' and Sailors' Civil Relief Act (Section 525, 50 USCA Appdx), is under Florida law as supplemented by said Section 205, Soldiers' and Sailors' Civil Relief Act merely voidable rather than void, erroneously construe the decision of this Court in LeMaistre?

(2) Does the decision of the Supreme Court of Florida rendered in the above cause which apparently overrules the law of Florida that tax deeds prematurely issued are void, insofar as veterans of World War II, claiming under Section 205 of the Soldiers' and Sailors' Civil Relief Act are concerned, and apparently leaves the law that tax deeds prematurely issued are void undisturbed as to all other persons and classes, deny the Petitioner, Charles E. Moorman, a World War II veteran, equal protection of the law, contrary to the provisions of the Fourteenth Amendment, Section 1, Constitution of the United States?

6. The pertinent constitutional provisions and statutes which Petitioner deems to be involved are as follows:

(a) Fourteenth Amendment, Section 1, United States Constitution, Vol. 1, U.S. Code, 1964, p. XLVII

(b) Section 205, Soldiers' and Sailors' Civil Relief Act (Sec. 525, 50 USCA, Appdx) (Section 525, Title 50, Appdx, Vol. 11, U.S. Code, 1964, p. 9586.)

(c) Section 1000, Compiled General Laws of Florida, 1927, p. 356.

(d) Section 194.02(1) Florida Statutes Annotated 1965, (Florida Statutes, 1965, p. 801.)

(e) Sections, 194.16, 194.17, 194.18, Florida Statutes Annotated, (Florida Statutes, 1965, pp. 804, 805).

The pertinent provisions of the aforesaid constitutional provisions and statutes are set forth in an Appendix attached hereto.

7. (A) concise statement of the pertinent facts of the case is set out as follows:

The Petitioner, Charles E. Moorman entered the U.S. Navy in October, 1942, and took title to the lands in controversy, located in Volusia County, Florida, on December 23, 1942. A tax certificate had previously issued against said property on August 2, 1937. On June 4, 1945, while Petitioner was overseas in the Navy, the Circuit Court Clerk of Volusia County, Florida, issued a tax deed on said lands to two brothers named Headly, the Respondents' predecessors in title. Petitioner was discharged from military service on December 20, 1945, and sought to regain his property upon learning that it had been sold for taxes, by hiring an attorney for that purpose (Transcript, page 31) but apparently the lawyer did nothing (Transcript, page 32). Petitioner consulted other counsel, but was not able through the efforts of said counsel to recover his land, (Transcript, page 32). One attorney advised the Petitioner to wait until he was sued by the purchasers to quiet the title to said property, and "then there would be plenty of time to counter-sue." (Transcript, page 40). In December, 1963, the Respondents, who then held title to the lands in question, sued Petitioners to quiet title thereto. Petitioners counterclaimed, praying that Respondents' title, based on the aforesaid tax deed, and the tax deed itself be declared null and void under the laws and applicable decisions of the Courts of Florida, as having been prematurely issued, that is, issued while Petitioner Charles E. Moorman was in military service and under the protection of Section 205 of the Soldiers' and Sailors' Civil Relief Act. Petitioners prayed that the title of Respondents and their claims

be cancelled as a cloud on Petitioners' title. On October 25, 1965, the Circuit Court of Volusia County, Florida entered its summary final decree in the above cause granting the relief prayed by Respondents and adjudging that any interest Petitioners had in said lands was null and void, and adjudged the tax deed and Respondents' title based thereon to be valid. Petitioners filed a timely appeal from the said judgment to the District Court of Appeal of Florida, First District, and on November 15, 1966, said District Court entered its opinion and decision reversing the decision of the Circuit Court of Volusia County mentioned aforesaid, on the basis of the District Court's opinion in the companion case to the one at bar of Headley v. Moorman, 192 So2d 30 (Fla. DCA 1, 1966) wherein the District Court ruled that based on Section 205 of the Soldiers' and Sailors' Civil Relief Act and the decision of this Court in LeMaistre v. Leffers, citation supra, Petitioner Moorman had a period of time within which to redeem, which redemption time could not run while Petitioner was in military service, and for an equivalent period of time thereafter, and that the tax deed was prematurely issued and void, citing as authority therefor Mirabella v. Kickliter, 113 So2d 397 (DCA 2, Fla. 1959), and Burke v. O'Brien, 47 So2d 777 (Fla. 1950). Respondents filed a petition for a writ of certiorari in the Supreme Court of Florida to review the decision of the District Court, and the Supreme Court of Florida granted certiorari and quashed the decision of the District Court holding that the District Court had wrongly construed the decision of this Court in LeMaistre and that this Court had decided in LeMaistre that the tax deed issued in that case (a Florida case) was only voidable rather than void, and that if Petitioner did not redeem within the extended redemption time, that under Florida law, the deed was valid.

The Florida Supreme Court specifically limited the application of its decision to World War II veterans, noting that other hostilities were not necessarily governed thereby.

8. The Federal question as to whether or not this Court in its opinion in LeMaistre had declared that Florida tax deeds issued prematurely because the owner was in military service under the protection of the Soldiers' and Sailors' Civil Relief Act were merely voidable was first raised by the Respondents in their Brief filed in the District Court of Appeal, First District, Respondents contending therein that this Court had ruled in LeMaistre that a tax deed issued prematurely because of the owner's protection under the Soldiers' and Sailors' Civil Relief Act was merely voidable rather than void, and that if the veteran did not redeem within the extended redemption time allowed by the Act, that, under Florida law, his rights in the land were lost. Petitioner contended that this Court ruled in LeMaistre that the pertinent Section (205) of the Soldiers' and Sailors' Civil Relief Act had extended the time for redemption of lands sold for taxes, but did not rule on the status under Florida law of a tax deed issued prematurely because issued while the owner was in military service under the protection of the Soldiers' and Sailors' Civil Relief Act, the status of the deed being purely a state question, and the law of Florida being that tax deeds prematurely issued were void. In the companion case to the one at bar of Headley v. Moorman, 192 So2d 30 (DCA 1, Fla. 1966) copy of opinion attached hereto, the same contention was made, and the District Court ruled adversely thereto, as follows:

"Appellant argues that the appellee was discharged on December 20, 1945, and therefore, the period of military service being tolled appellee could have redeemed or brought an action to redeem at any time to and including

the 21st of December, 1948, which was the equivalent of the three year period of military service, but since suit was not filed until June 3, 1965, it was not timely brought. From what we have said, this contention cannot prevail. The tax deed having been prematurely issued it was not voidable, but void. Burke v. O'Brien, 47 So2d 777, (Fla. 1950); Mirabella v. Kickliter, 113 So2d 397 (Fla. App. 1959), both involving the application of the Soldiers' and Sailors' Civil Relief Act to tax deeds."

In its opinion in the case at bar the District Court adopted its decision in the companion case as follows: (Transcript, page 11).

"In Headley v. Moorman (not yet reported) this Court in reviewing the same factual situation concluded by reason of the Soldiers' and Sailors' Civil Relief Act that the tax deed was prematurely issued and therefore void upon the authority of LeMaistre v. Leffers, 333 US 1, 92 L. Ed. 429 (1947), Burke v. O'Brien, 47 So2d 777 (Fla. 1950) and Mirabella v. Kickliter, 113 So2d 397, (Fla. App. 2d, 1959). The same conclusion is reached in the instant case."

The Supreme Court of Florida agreed with Respondents' contention, as follows: (Transcript, p. 88)

"We believe the decision of the District Court conflicts with LeMaistre v. Leffers, 34 So2d 434, a decision entered by our Court pursuant to reversal mandate and remand of that case by the Supreme Court of the United States in LeMaistre v. Leffers, 333 U.S. 1, 92 L. Ed. 429, 68 S. Ct. 371." . . . *Transcript, page 90:* . . . "The District Court accepts the Moorman's contention that the tax deed in controversy, which it recites was issued June 4, 1945, is void

because it was prematurely issued during the time Moorman was entitled to redeem under said Act. But as we understand the LeMaistre decision of the United States Supreme Court, Moorman, who was discharged on December 20, 1945, would have had two years and seven months and 29 days thereafter to redeem, or until August 17, 1948. . . ." *Transcript, page 91:* . . . "We do not believe Florida tax laws relating to the taxation of real property, including provision for the collection and enforcement of such taxes through issuance of tax certificates and tax deeds, should be construed to have been suspended by the Soldiers' and Sailors' Civil Relief Act and thus render void the advertising for and issuance of tax certificates and tax deeds during the periods relief is extended by said Act to soldiers and sailors. As we understand such laws and the holding of the Supreme Court of the United States in LeMaistre, tax certificates and deeds are rendered voidable during the relief periods within which redemption can be made under the Soldiers' and Sailors' Civil Relief Act, but such instruments are not rendered void ab initio merely because they are issued during said periods."

The second Federal question sought to be raised, that is, whether or not the decision of the Supreme Court of Florida to which certiorari is sought, which decision apparently limits its holding that tax deeds prematurely issued because of the Soldiers' and Sailors' Civil Relief Act are merely voidable to World War II veterans denies the Petitioner, a World War II veteran the equal protection of the laws contrary to the Fourteenth Amendment was first raised by the statement of the Supreme Court of Florida in the decision sought to be reviewed, as follows:

"Our decision in this case adopts the construction of the Federal Court concerning the application of the Soldiers'

and Sailors' Civil Relief Act in situations arising from military service in World War II. The application of said act to situations arising from military service in hostilities subsequent to World War II is not necessarily governed by this decision." (Transcript p. 92)

9. The argument of the Petitioners is concisely set forth as follows:

(a) *Concerning the first asserted Federal question.*

In 1883, the Supreme Court of Florida in the case of Neal v. Spooner, 20 Fla. 38, held that tax deeds prematurely issued are void. The principle laid down in this case has been applied without exception in Florida by the Florida courts until the decision of the Florida Supreme Court in the case at bar which is sought to be reviewed. The Florida statutes Secs. 194.16-18, F.S.A. and Compiled Gen. Laws 1927 §1000 provide the procedure by which application for a tax deed may be made on a tax certificate. These statutes and the requirements therein have been held by the Supreme Court of Florida to be jurisdictional, Wells v. Thomas, 78 So2d 378 (1955) and a failure to comply with the provisions of these statutes renders a tax deed invalid. This principle had been applied uniformly to both civilians upon whose lands tax deeds had been prematurely issued, Neal v. Spooner, citation supra, Stewart v. Powell, 158 Fla. 420, 28 So2d 879, and also to soldiers and sailors under the protection of the Soldiers' and Sailors' Civil Relief Act, Mirabella v. Kickliter, 113 So2d 397, (DCA 2, 1959, Fla.); Burke v. O'Brien, 47 So2d 777 (Fla. 1950).

On October 6, 1942, Congress enacted Section 205 of the Soldiers' and Sailors' Civil Relief Act. This section had the effect of extending the time for redemption by veterans of

lands of theirs sold for taxes while they were in military service. The Federal law became a part of and had to be read in pari materia with the Florida taxing statutes.

Under Florida law read together with Section 205 of the Act, the tax deed issued against Petitioner's property on June 4, 1945, while the Petitioner was in military service was prematurely issued, because it was issued while the Petitioner still had a right to redeem. Under the decisions of the Florida courts, this rendered the deed in question clearly void, Mirabella v. Kickliter; Burke v. O'Brien, cits. supra. However, the Respondents argued in the Supreme Court of Florida, and the Supreme Court agreed, that this Court by its decision in LeMaistre had declared that tax deeds issued against property in Florida owned by those in military service under the protection of the Act were merely voidable and not void, and that if the property was not redeemed within the extended time that the deed was valid. This conclusion was arrived at by the Florida Court because this Court in its opinion in the LeMaistre case after pointing out that the veteran had an extended time after being discharged from military service within which to redeem, made the following comment:

> "His present action being timely, there is thus no barrier to his recovery *as far as the Act is concerned*. (Emphasis supplied.)

The above emphasized part of the quotation from the Court's opinion is felt to be significant because Petitioners feel that when the Court made the statement alluded to above, it was thinking in terms of petitioner's rights under Federal law, namely the Soldiers' and Sailors' Civil Relief Act, and was not asserting the status of the tax deed under Florida law. The status of the tax deed was strictly a state question. The Florida courts had

held that tax deeds prematurely issued are void. This was the status of the tax deed in LeMaistre under Florida law, and this was the same conclusion reached by a California court in discussing LeMaistre in the case of Margraf v. County of Los Angeles, 301 P2d 490 (1956), the Court observing:

> "The state court, 159 Fla. 122, 31 So2d 155, had dismissed LeMaistre's suit to set aside the tax deed and the Supreme Court of the United States reversed that ruling. That can spell only one thing, a void deed. It does not imply, as appellant's counsel contends, a recognition of the right to hold the second sale or to make the tax deed."

The Utah case of Day v. Jones, 112 Utah, 286, 187 P2d 181, (1947), held that a tax deed issued against the property of a soldier under the protection of the Act was prematurely issued, and being prematurely issued was void. Clearly, the courts of Utah and California have not read in the Act the meaning the Florida Court does in the case at bar, in its interpretation of this Court's opinion in LeMaistre.

Also, Petitioners submit, this Court affirmed LeMaistre's Federal right under the Act of the extended time to redeem, and clearly was not concerned whether or not, under Florida law, the deed was void or voidable, because under Federal law the Petitioner was entitled to redeem, regardless of the deed's validity or non-validity.

The decision of the Supreme Court of Florida to which review is sought in effect holds that this Court set aside, in its opinion in LeMaistre, the plain express provisions of Section 205 of the Act, which provides that no part of the veteran's military service shall be included in computing any period provided by law for the redemption of real property.

As provided in Section 194.02(1) F.S.A. and as pointed out in Headley v. Moorman, citation supra, the Petitioner had until the deed was issued within which to redeem. However, before a deed could issue, application for tax deed, advertising of notice of application for tax deed, and the mailing of notice of application for the tax deed to the owner must be done. All these things are for the protection of the land owner. All are jurisdictional. All are during the running of the owner's redemptive period, which, by the terms of the Act cannot run while the owner is in military service. To hold that the aforesaid jurisdictional occurrences such as advertising and notice may take place and a tax deed may issue while the owner is in military service under the protection of the Act is to set aside the very letter and spirit of the Act. In Margraf, citation supra, the California court correctly said:

> "Appellants contend that the sale may proceed, but that it does not actually terminate the redemption period. We cannot adopt that view. *It is wholly inconsistent to say that the right of redemption cannot be terminated when the property owner is in the armed service, but that a sale, which is specifically designated as the event whereby same is terminated, may be held at anytime.*" (Italics supplied.)

In Section 229, United States Courts, 54 Am Jur 863, it is said:

> "Ordinarily, matters of local or state law are for the State courts, and their decisions in respect thereto are binding on the Supreme Court."

In view of the fact that this Court observed in LeMaistre that the Soldiers' and Sailors' Civil Relief Act must be read with an eye friendly to those who dropped their affairs to answer their country's call, it is submitted that it is hardly likely that the Court overruled 65 years of then existing Florida

law, and held that as to veterans claiming under the Soldiers' and Sailors' Act tax deeds prematurely issued on the lands of soldiers were merely voidable, when tax deeds issued prematurely on the lands of civilians were void.

In conclusion, on this question, it is submitted that the Supreme Court of Florida erroneously construed the opinion rendered by this Court in the LeMaistre case, and decided the case at bar, which had to do with Petitioner's rights under a Federal statute in a manner inconsistent with this Court's decisions on the subject.

(b) Concerning the second asserted Federal question, it is submitted that there is no more basis for discrimination because of the war in which the veteran served, than there is for discrimination because of a veteran's race. Section 205 of the Soldiers' and Sailors' Civil Relief Act is still in effect and has been since October 6, 1942. It has covered men and women who served in World War II, peace time, the Korean conflict, the Vietnamese War, the Dominican Pacification, and all soldiers and sailors and airmen who have served from 1942 until the present.

Under the adjudicated case law of Florida, as previously cited, tax deeds prematurely issued are void, both as to all veterans protected under the Soldiers' and Sailors' Civil Relief Act, and as to civilians. The decision to which review is sought changes this law with regard to World War II veterans, holding that tax deeds prematurely issued on the property of World War II veterans, because of the applicability of the Soldiers' and Sailors' Act, are merely voidable rather than void. This premise also necessarily includes the assertion that with regard to World War II veterans' property, it was permissible to go ahead and make application for a tax deed, advertise notice of the application for tax deed, and do the other things required

by Sections 194.16-18 F.S.A. and C.G.L. 1927 §1000 as a prerequisite to the issuance of a tax deed in Florida, things which are done during the running of the owner's redemptive period, prior to the actual issuance of the tax deed, in spite of the express proviso in Section 205 of the Act that no part of the soldier's time in military service shall be counted in computing the time for redemption. This, it is submitted, is contrary to the letter and spirit of Section 205 of the Act, as interpreted by this Court, and applied to World War II veterans only denies to said veterans in general, and Petitioner Moorman in particular, the equal protection of the laws, in the application by the State Court of a law involving federal rights. As this Court has pointed out in LeMaistre, the Soldiers' and Sailors' Civil Relief Act must be read with an eye friendly to those who dropped their affairs in response to their country's call, and it is respectfully contended, World War II veterans dropped their affairs and responded to their country's call just as faithfully as the soldiers in other wars did, and there is no basis for the application by the State of federal law in a way that would allow them lesser rights thereunder than soldiers serving in other wars, and soldiers generally under the protection of the Act.

The equal protection of the laws required under the Constitution means subjection to equal laws, applying alike to all in the same situation. Southern R. Co. v. Greene, Ala. 1910, 30 S Ct 287, 216 U.S. 400, 54 L Ed 536.

In Chambers v. State of Florida, Fla. 1940, 60 S. Ct. 472, 309 US 227, 84 L. Ed. 716, this Court held that all people must stand on an equality before the bar of justice in every American court. And in Sexton v. Barry, C.A. Ohio, 1956, 233 F2d 220, certiorari denied, 77 S. Ct. 94, 352 US 870, 1 L. Ed2d 76, it was held that the constitutional guaranty of "equal protection of law" to people of the state implies that all litigants similarly

situated may appeal to courts for both relief and defense under like conditions, with like protection, and without discrimination.

It is contended that there can be no doubt that veterans who have served in our country's wars and who have served in the armed services since October 6, 1942, under the protection of the Soldiers' and Sailors' Civil Relief Act, are members of a class similarly situated, and that the decision to which review is sought which puts World War II veterans in a different class, denies Petitioner Moorman the equal protection of the laws.

It is respectfully prayed that the Writ of Certiorari petitioned for in this Honorable Court to the Supreme Court of Florida be granted, and that this Court enter its order reversing the judgment sought to be reviewed, with directions to the Supreme Court of Florida to reinstate the opinion and judgment of the District Court of Appeal of Florida, First District, in the above cause, reported in 192 So2d 320, (Fla. 1966).

Copies of the opinions of the Circuit Court of Volusia County, Florida, the District Court of Appeal of Florida, First District, and the Supreme Court of Florida, rendered in the cause are appended to this petition. Also appended is the opinion of the District Court of Appeal of Florida, First District, in the companion case of Headley v. Moorman, 192 So2d 30 (Fla. 1966)

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APPENDIX

Pertinent provisions of Section 1000, Compiled General Laws of Florida, 1927, page 356.

Notice of application for tax deed. No tax deed for lands sold for taxes shall issue until the clerk of the circuit court shall have given at least thirty days previous notice of the application for a deed by publishing the same once a week in some newspaper in the county, then by posting such notice at least thirty days at the courthouse door, and at least two or more public places in such county, and all fees and expenses of notice shall be paid in advance by applicant for tax deed. . . .

Section 194.16 Florida Statutes, 1965, p. 804 Notice, form of publication for obtaining tax deed by holder, other than county. Upon the receipt of the application as provided by Section 194.15 and after the proper fees have been paid, the clerk shall cause a notice in substantially the following form to be published once a week for four successive weeks (four publications each one week apart) in some newspaper of general circulation published in the county where the lands are located; or if there be no newspaper published in such county, then such notice may be posted the same length of time at the courthouse door and in two other public places in the county. . . .

Section 194.17 Florida Statutes, 1965, p. 804 Proof of publication of notice for tax deed holder, other than county.—Proof of the publication or posting of the notice provided for in Section 194.20 shall be filed by the clerk of the circuit court in his office on or before the date fixed for the making of the sale. Where there is no newspaper the clerk shall execute and file in his office a certificate as to posting of such notices, stating where and on what dates the notices were posted.

Section 194.18 Florida Statutes, 1965, p. 804-5 Mailing notice to owner where application is made by holder other than county.

(1) In addition to the publication of the notice provided for by Section 194.16 the clerk of the circuit court shall mail a copy of such notice to owner of the property and to each mortgagee, if any, if the name and address of such persons appear on the tax roll for year in which taxes were last extended on such property or if the name and address of such persons do not appear thereon then the notice shall be mailed to the person last paying taxes upon such lands as shown by the tax collector's receipt book and in the event no address be shown thereon no notice shall be required; and the clerk shall mail a copy of the notice of sale by registered mail to the municipality, and other taxing districts in which the property described therein is situated; and the clerk shall enclose with every copy mailed a statement as follows: "Warning, property in which you are interested is listed in the copy of the enclosed notice"; and the clerk shall copy out and attach to the affidavit of the publisher attesting to the publication of such notice, a certificate, that, he the clerk, did on the ..... day of ..... 19....., mail a copy of the notice addressed to ..... at ....., which certificate shall be signed by the clerk and his official seal affixed thereto; and such certificate shall be prima facie evidence of the fact that such notice was mailed. . . .

(a) *Amendment 14, Section 1, Constitution of the United States, USCA* All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall

any State deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

(b) *Section 205, Soldiers' and Sailors' Civil Relief Act* (Sec. 525, 50 USCA, Appdx) (Section 525, Title 50, Appdx, Vol. 11, U.S. Code, 1964, p. 9586). The period of military service shall not be included in the computing of any period now or hereafter to be limited by any law, regulation, or order for the bringing of any action of proceeding in any court, board, bureau, commission, department, or other agency of government by or against any person in military service or by or against his heirs, executors, administrators, or assigns, whether such cause of action or the right or privilege to institute such action or proceeding shall have accrued prior to or during the period of such service, nor shall any part of such period which occurs after the date of enactment of the Soldiers' and Sailors' Civil Relief Act Amendments of 1942 (Oct. 6, 1942) be included in computing any period now or hereafter provided by any law for the redemption of real property sold or forfeited to enforce any obligation, tax or assessment.

(c) *Section 194.02(1) F.S.A. 1965* (page 801, Florida Statutes, 1965) Any person, or agent of any person, owning or claiming such lands sold for taxes, or any part or parcel thereof, or any interest therein, or the creditor of any such owner or claimant may redeem the same at any time after such sale and before a tax deed is issued therefor, by paying to the clerk of the circuit court of the county wherein such land is situated the face of the certificate of sale, or such portion thereof as the part or interest redeemed shall bear to the whole, and interest thereon from the date of the certificate, together with the fee of fifty cents for the clerk for each certificate or part of certificate so redeemed.

IN THE CIRCUIT COURT OF THE SEVENTH JUDICIAL CIRCUIT IN AND FOR VOLUSIA COUNTY, FLORIDA IN CHANCERY
NO. 35,752 Div. B

WILLIAM T. THOMAS, OLIVE R. THOMAS and WILLIAM T. THOMAS, JR.,

Plaintiffs,

vs.

CHARLES E. MOORMAN and wife, EARLINE D. MOORMAN,

Defendants.

SUMMARY FINAL DECREE

This cause was heard by the Court upon the Motion for Summary Final Decree filed by the Plaintiffs herein and the Court having considered said Motion, together with the pleadings and deposition of the defendants, CHARLES EDWARD MOORMAN and wife, EARLINE D. MOORMAN, and having heard argument of counsel thereon, and no affidavit having been filed by the Defendants in opposition to said Motion and it appearing to the Court that there is no genuine issue of material fact to be tried in this cause, IT IS THEREFORE,

ORDERED, ADJUDGED AND DECREED as follows:

(1) That said Motion for Summary Final Decree be, and the same is hereby granted and that a Summary Final Decree be, and the same is hereby entered in favor of the Plaintiffs and against the Defendants and each of them.

(2) That this Court has jurisdiction of the parties hereto and the subject matter hereof.

(3) That the equities herein are with the Plaintiffs, WILLIAM T. THOMAS, OLIVE R. THOMAS and WILLIAM T. THOMAS, JR., and against the Defendants and that the Plaintiffs have duly shown and proven their record title of, in and to the lands involved in this suit.

(4) The Plaintiffs are the owners and are seized in fee simple and claim the legal and equitable title in and to the following described lands in Volusia County, Florida to-wit:

> The North one-half of Lot Four (4), Block Sixteen (16), Dunlawton Subdivision, as per map in Deed Book "M" page 187, of the Public Records of Volusia County, Florida.
>
> Subject to Mortgage held by Citizens Bank of Bunnell, Bunnell, Florida, dated July 20, 1962 and filed August 20, 1962, in Official Records Book 468, Page 527, Volusia County, Florida, upon which there is an unpaid balance of $3,559.24,

that Plaintiffs are in actual possession and occupation of said parcel of land and each and every part thereof, adverse to the whole world; that the Plaintiffs, WILLIAM T. THOMAS and wife, OLIVE R. THOMAS are the owners and are seized in fee simple and claim the legal and equitable title of, in and to an undivided two-thirds (2/3) interest in the above-described lands, and the Plaintiff, WILLIAM T. THOMAS, JR., is the owner and seized in fee simple and claims the legal and equitable title of, in and to an undivided one-third (1/3) interest of the above-described parcel of land.

(5) That the possession and occupation of said lands of Plaintiffs and their predecessors in title is now and at all time hereto-

fore has been exclusive, open, notorious, adverse, unbroken, uninterrupted and hostile to the whole world since the 4th day of June, A.D. 1945; that the Plaintiffs claim title to the hereinabove described parcel of land under and by virtue of a certain tax deed made, executed and delivered to Oscar Lee Headley and Harry Leon Headley, pursuant to law, on the 4th day of June, 1945, by Jess Mathas, Clerk of the Circuit Court of Volusia County, Florida.

(6) That on July 22, 1959, said Oscar Lee Headley and Loretta Gammon Headley, his wife, made, executed and delivered their Quit-Claim Deed to Harry Leon Headley and Madge Powell Headley, his wife, recorded in Official Records 217, page 102, conveying to the said Harry Leon Headley and Madge Powell Headley, his wife, the parcel involved in this suit.

(7) That the said Harry Leon Headley and Madge Powell Headley, his wife by warranty deed, conveyed the lands involved in this suit to the Plaintiffs herein on the 15th day of November, A.D. 1963, and the Plaintiffs have not made any conveyance of said property, or any part thereof, or any interest therein, and there is outstanding and in existence a mortgage made, executed and delivered by Harry Leon Headley and Madge P. Headley, Husband and Wife, to Citizens Bank of Bunnell, dated July 20, 1962, and filed August 20, 1962, and recorded in Official Record Book 468, Page 527, Volusia County Records, which is a valid and subsisting lien against the property involved in this suit.

(8) That the Defendant, CHARLES E. MOORMAN, who is one and identically the same person as CHARLIE MOORMAN, was the former owner of the tract of land described in said tax deed.

(9) That the Plaintiffs and their predecessors in title, in open affirmative and positive assertion of their title and seisen, for more than seven years, last past, have paid, or caused to be paid, taxes and assessments levied and assessed upon said land; and Plaintiffs and their predecessors in title have executed mortgages upon said land and have done other and sundry acts in the assertion of their ownership and title in said land and during all of said period and to and including the date of the filing of their Bill of Complaint, have not, nor have any of them, been ousted or evicted or excluded therefrom, or from the use and occupation thereof, or any part or portion thereof.

(10) That said land is not, nor is any portion thereof in the possession of the parties defendant in this cause, or either of them, and there is no person in the actual possession of said lands except the Plaintiffs.

(11) That the fee simple title of, in and to that certain parcel of land, situate, lying and being in the County of Volusia, State of Florida, and more particularly known, distinguished and described as follows, to wit:

> The North one-half of Lot Four (4), Block Sixteen (16), Dunlawton Subdivision, as per map in Deed Book "M," page 187, of the Public Records of Volusia County, Florida.
>
> Subject to Mortgage held by Citizens Bank of Bunnell, Bunnell, Florida, dated July 20, 1962 and filed August 20, 1962, in Official Records Book 468, Page 527, Volusia County, Florida, upon which there is an unpaid balance of $3,559.24,

is in the Plaintiffs, WILLIAM T. THOMAS, OLIVE R. THOMAS and WILLIAM T. THOMAS, JR., and that the

title of the said WILLIAM T. THOMAS, OLIVE R. THOMAS and WILLIAM T. THOMAS, JR. in and to said parcel of land is hereby confirmed, declared, adjudged, and decreed as constituting in the Plaintiffs, WILLIAM T. THOMAS, OLIVE R. THOMAS and WILLIAM T. THOMAS, JR., a good and indefeasible title in fee simple, and that the title to said parcel of land is hereby forever quieted and confirmed in the said WILLIAM T. THOMAS, OLIVE R. THOMAS and WILLIAM T. THOMAS, JR. and that the title to said parcel of land is hereby freed and cleared of all clouds, except for Mortgage held by Citizens Bank of Bunnell, Bunnell, Florida, dated July 20, 1962 and filed August 20, 1962, in Official Records Book 468, Page 527, Volusia County, Florida, upon which there is an unpaid balance of $3,559.24; and any and all clouds or alleged clouds to said title, made or claimed by the said Defendants or any of them, are hereby removed and are hereby declared and decreed to be void and of no effect and force whatsoever; that the tax deed from the State of Florida to the Plaintiffs predecessors in title, herein, dated June 4, 1945, and recorded in the public records of Volusia County, Florida, on June 4, A.D. 1945, be and the same is hereby declared to be a good and sufficient tax deed, and that a good and indefeasible title to said parcel of land was thereby conveyed to the said OSCAR LEE HEADLEY and HARRY LEON HEADLEY, the Plaintiffs predecessors in title herein.

(12) That any title, right, claim or interest of the defendants herein, each and every one of them, to wit: CHARLES E. MOORMAN and wife, EARLINE D. MOORMAN, of, in, and to the lands involved herein, is hereby declared and decreed to be null and void and of no force and effect whatsoever by reason of the facts and allegations set forth in the Plaintiffs sworn Bill of Complaint, and that all claims, title and interest of said Defendants herein, each severally, in and to said parcel

of land above described are hereby divested out of the said Defendants and vested in the Plaintiffs, WILLIAM T. THOMAS, OLIVE R. THOMAS and WILLIAM T. THOMAS, JR.

(13) That the Defendants herein, each and every one of them severally, and their servants and attorneys, and anyone claiming or pretending to claim any right or title under, by or through said Defendants, or any of them, be, and they are hereby perpetually enjoined and restrained from interfering, or attempting to interfere, disturbing, or attempting to disturb in any way the peaceful and quiet possession of said property of Plaintiffs, their heirs or assigns, and from claiming, or attempting to claim, asserting, or attempting to assert any right, title or interest in the said parcel of land hereinabove described.

DONE, ORDERED, ADJUDGED AND DECREED in Chambers at Holly Hill, Volusia County, Florida, this 25th day of October, A.D. 1965.

Robt. H. Wingfield
CIRCUIT JUDGE

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA
JULY TERM, A. D. 1966

OSCAR LEE HEADLEY and
LORETTA GAMMON HEADLEY,
his wife,

Appellants,

vs.

CHARLES E. MOORMAN,

Appellee.

Not Final Until Time Expires to File Rehearing Petition and Disposition Thereof if Filed.

CASE NO. I-125

Opinion filed November 3, 1966.

An Interlocutory Appeal from the Circuit Court for Volusia County.
James T. Nelson, Judge.

Isham W. Adams, for Appellants.

Alex D. Littlefield, Jr., for Appellee.

SACK, J.

This is an interlocutory appeal from an order denying appellants' motion to dismiss a complaint seeking to annul and set aside a tax deed on appellee's property.

The chronology of events, is as follows: (a) in 1937 a tax certificate was issued upon the property in question; (b) in 1942 the plaintiff (appellee) became the owner of the property; (c) on December 20, 1942, the plaintiff entered the Armed Service of the United States and served until his discharge on December 20, 1945; (d) on June 4, 1945, while plaintiff was overseas, the Clerk issued a tax deed, based on the 1937 certificate, to Oscar Lee Headley and Harry Leon Headley; and (e) on July 23, 1959, Harry Leon Headley, joined by his wife, quitclaimed his interest to the defendants, who are appellants here.

Appellants contend, on these facts, that the tax deed was properly issued, while the appellee asserts that the tax deed was prematurely issued, and therefore void, in view of the provisions of the Soldiers' and Sailors' Civil Relief Act, 50 U.S.C.A., App. § 525. The applicable portion of this Act is as follows:

"STATUTES OF LIMITATIONS AS AFFECTED BY PERIOD OF SERVICE.

The period of military service shall not be included in computing any period now or hereafter to be limited by any law, regulation, or order for the bringing of any action or proceeding in any court, board, bureau, commission, department, or other agency of government by or against any person in military service or by or against his heirs, executors, administrators, or assigns, whether such cause of action or the right or privilege to institute such action or proceeding shall have accrued prior to or during the period of such service, *nor shall any part of such period which occurs after the date of enactment of the Soldiers' and Sailors' Civil Relief Act Amendments of 1942* (*Oct. 6, 1942*) *be included in computing any period now or hereafter provided by any law for the redemption of real property sold or forfeited to enforce any obligation, tax,*

or assessment. Oct. 17, 1940, c. 888, § 205, 54 Stat. 1181; Oct. 6, 1942, c. 581, § 5, 56 Stat. 770." (Underscoring supplied.)

Section 194.02, Florida Statutes, permits the redemption of a tax certificate at any time before a tax deed is issued. The statutory provisions in effect covering 1937 certificates provided for the issuance of a tax deed after publication of notice by the Clerk at least thirty days previous to the date of the proposed issuance of the deed and the mailing of notice of application to the owner. Comp. Gen. Laws 1927, § 1000.

The words, "any period now or hereafter provided by any law for the redemption of real property," appearing in 50 U.S.C.A., App. § 525, necessarily includes the thirty days period during which the advertisement would be running.

It is clear then that at the time of the first advertisement the appellee was entitled to redeem during the following thirty days, and, in our reading of the quoted provisions of the Soldiers' and Sailors' Civil Relief Act, such time of redemption would then be tolled, at least during the period of his service and, under LeMaistre v. Leffers, 333 U.S. 1, 92 L. Ed. 429 (1947), for a period of time thereafter equivalent to the period of service. The tax deed was, therefore, prematurely issued, since no effective advertisement could be run during the period of military service.

Appellant argues that the appellee was discharged on December 20, 1945, and therefore, the period of military service being tolled appellee could have redeemed or brought an action to redeem at any time to and including the 21st day of December, 1948, which was the equivalent of the three year period of military service, but since suit was not filed until June 3, 1965, it was not timely brought. From what we have said, this conten-

tion cannot prevail. The tax deed having been prematurely issued, it was not voidable, but void. Burke v. O'Brien, 47 So.2d 777 (Fla. 1950); Mirabella v. Kickliter, 113 So.2d 397 (Fla. App. 1959), both involving the application of the Soldiers' and Sailors' Civil Relief Act to tax deeds.

Accordingly the order below is affirmed.

RAWLS, CHIEF JUDGE, Concurs. JOHNSON, J., CONCURS SPECIALLY.

JOHNSON, J., Special concurring:

I concur in the affirmance of the decree appealed, but feel compelled to point out that I do not think the cases cited in the opinion preclude the appellants, defendants below, from ultimately defeating the appellee's, plaintiff below, claim of ownership, if proper answer and defenses are interposed. I think the complaint is deficient in proper allegations to meet the statutory reqtirements and that laches, as alleged as the third ground of the motion, may be proven under proper allegations which are not so apparent on the face of the pleadings to admit a ruling thereon by the chancellor at this stage of the proceedings.

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA
JULY TERM, A. D. 1966.

CHARLES E. MOORMAN and
EARLINE B. MOORMAN, his wife,

Appellants,

vs.

WILLIAM T. THOMAS, OLIVE R. THOMAS and WILLIAM T. THOMAS, JR.,

Appellees.

Not Final Until Time Expires to File Rehearing Petition and Disposition Thereof if Filed.

CASE NO. H-233

Opinion filed November 15, 1966.

An Appeal from the Circuit Court for Volusia County. Robert H. Wingfield, Judge.

Alex D. Littlefield, Jr. for Appellants.

Black, Cobb, Cole & Crotty for Appellees.

RAWLS, Chief Judge.

Appellant Moorman appeals from a summary final decree quieting the title to certain lands in the appellees. Two questions are presented, viz.: (1) The validity of a tax deed issued

in 1945; and (2) The sufficiency of proof of adverse possession by appellees.

We will first consider the tax deed. A tax certificate was issued August 2, 1937 describing the land in controversy. In October of 1942, Moorman entered the armed services and in December of the same year he completed purchase of the land at which time same was conveyed to him. On June 4, 1945, while Moorman was in the armed services, a tax deed based upon the 1937 tax certificate was issued to appellees' predecessor in title. The chancellor held that the tax deed ". . . is hereby declared to be a good and sufficient tax deed."

As to the validity of the tax deed, appellant contends that the Soldiers' and Sailors' Civil Relief Act tolled the running of time allowed him by Florida law for the redemption of his property so long as he was in the military service. He then reasons that since the period for redemption was tolled, the issuance of the tax deed was premature and therefore void.

In Headley v. Moorman (not yet reported) this court in reviewing the same factual situation concluded by reason of the Soldiers' and Sailors' Civil Relief Act that the tax deed was prematurely issued and therefore void upon the authority of LeMaistre v. Leffers, 333 U. S. 1, 92 L. Ed. 429 (1947), Burke v. O'Brien, 47 So.2d 777 (Fla. 1950) and Mirabella v. Kickliter, 113 So2d 397 (Fla. App. 2d, 1959). The same conclusion is reached in the instant cause.

The chancellor found in his summary final decree that ". . . the possession and occupation of plaintiffs and their predecessors in title is now and at all time heretofore has been exclusive, open, notorious, adverse, unbroken, uninterrupted and hostile to the whole world since the 4th day of June, A. D. 1945, . . ." From the record before us, we are unable to understand how

the chancellor reached such a conclusion. Appellees-plaintiffs filed their verified petition alleging sundry facts to establish a claim of adverse possession. Appellant-defendant in his answer denied the material allegations. No proof was adduced by plaintiffs in support of their pleas pertaining to adverse possession. Issue was joined as to this question, and it was error to dispose of same in a summary proceeding. Therefore, the cause is reversed for further proceedings.

REVERSED.

JOHNSON and SACK, JJ. CONCUR.

IN THE SUPREME COURT OF FLORIDA
JANUARY TERM, A. D. 1967

WILLIAM T. THOMAS, OLIVE R. THOMAS and WILLIAM T. THOMAS, JR.,

Petitioners,

vs.

CHARLES B. MOORMAN and EARLINE B. MOORMAN, his wife,

Respondents.

Not Final Until Time Expires to File Rehearing Petition and, if Filed, Determined.

CASE NO. 36,004

Opinion filed June 7, 1967

Writ of Certiorari to the District Court of Appeal, First District

Thomas T. Cobb of Black, Cobb, Cole, Crotty & Sigerson, for Petitioners

Alex D. Littlefield, for Respondents

ERVIN, J.

We review through conflict-certiorari the decision of the District court of Appeal, First District, in Moorman v. Thomas 192 So.2d 320.

It appears from the opinion of the District Court that Respondent Charles E. Moorman entered the armed services in October, 1942. In December of that year he completed purchase of the land in controversy. On June 4, 1945, while Moorman was in the armed services, a tax deed on said land based upon a 1937 tax certificate was issued to the predecessor in title of the Thomases, Petitioners here.

In their appeal to the District Court from a final decree quieting title to said land in the Thomases, the Moormans questioned the validity of the tax deed issued in 1945. They contended the Soldiers' and Sailors' Civil Relief Act (50 USCA, Appendix 9, § 525) tolled the running of time allowed Charles E. Moorman by Florida law for the redemption of his property so long as he was in the military service. They reasoned that since the period of redemption was tolled the said tax deed issued during the tolled period was premature and therefore void.

The District Court agreed with the Moorman's contention and reversed. In reversing, it said:

> "[1] In Headley v. Moorman, 192 So.2d 30, this court in reviewing the same factual situation concluded by reason of the Soldiers' and Sailors' Civil Relief Act that the tax deed was prematurely issued and therefore void upon the authority of LeMaistre v. Leffers, 333 U.S. 1, 68 S.Ct. 371, 92 L. Ed. 429 (1947), Burke v. O'Brien, 47 So.2d 777 (Fla. 1950) and Mirabella v. Kickliter, 113 So.2d 397 (Fla.App.2d, 1959). The same conclusion is reached in the instant cause."

We believe the decision of the District Court conflicts with LeMaistre v. Leffers, Fla. 1948, 34 So.2d 434, a decision entered by our Court pursuant to reversal mandate and remand of

that case by the Supreme Court of the United States in LeMaistre v. Leffers, 333 U.S. 1, 92 L.Ed. 429, 68 S.Ct. 371.

In the LeMaistre case it appears a tax certificate was issued August 5, 1940 upon land owned by LeMaistre. LeMaistre entered the service on August 18, 1942, two years and 13 days after the tax certificate was issued. The Soldiers' and Sailors' Civil Relief Act went into effect October 6, 1942. The Tax deed in the LeMaistre case was issued March 1, 1943. LeMaistre was discharged from military service on December 18, 1945.

The Supreme Court of the United States, in LeMaistre, said:

"Petitioner owned land in Florida on which taxes became delinquent April 1, 1940. Under Florida statutory procedure the tax collector after notice sells the land at public sale and issues a tax certificate to the purchaser. At any time after two years from the date of the certificate the holder thereof may apply for a tax deed. Notice is given, a public sale is had, and a tax deed is issued. The owner may redeem the land at any time after issuance of the certificate and before issuance of the tax deed.

"In accordance with this procedure a tax certificate on petitioner's lands was issued August 5, 1940. Petitioner was on active duty in the Navy from August 18, 1942, until his discharge on December 18, 1945. Application for a tax deed was made by one Conrod in January, 1943, and the deed issued to him on March 1, 1943. It is through him that respondents claim by mesne conveyances.

"Petitioner filed this suit in equity on March 25, 1946, seeking to set aside the tax deed by reason of § 205 of the Soldiers' and Sailors' Civil Relief Act. The Florida Supreme Court affirmed a judgment denying the relief, Fla.,

31 So.2d 155, on the authority of its earlier decision in De Loach v. Calihan, Fla., 30 So.2d 910. The case in here on a petition for a writ of certiorari which we granted because the construction given to the federal Act seemed to us not only a dubious one but also at variance with Illinois Nat. Bank of Springfield v. Gwinn, 390 Ill. 345, 61 N.E.2d 249, 159 A.L.R. 468.

"Under Florida law petitioner concededly could have redeemed any time between August 5, 1940, when the certificate was issued, and March 1, 1943, when the tax deed was issued. The provision of the Federal Act with which we are here concerned became effective during that period—October 6, 1942. At that time petitioner was in the Navy and at once became a beneficiary of it. That means that the running of the time granted him under Florida law to redeem was tolled as long as he was in the military service. Since he would have had from October 6, 1942, to March 1, 1943, to redeem, the effect of the Act was to give him the same length of time after his discharge for that purpose. His present action is timely, there is thus no barrier to his recovery so far as the Act is concerned." (at 372)

* * * *

". . . Section 205 extends in terms to all land and only tolls the time for redemption for the period of military service. . . ." (at 373)

LaMaistre was entitled by said Act as so construed to redeem at any time he was in military service. In addition, he was entitled after his discharge from military service to redeem during a period of time equal to the period extending from the

date said Act became effective (October 6, 1942) and the time Florida law allowed him to redeem before the tax deed issued, which was March 1, 1943. Florida law permits redemption at any time prior to the issuance of a tax deed.

In the LeMaistre case it appears LeMaistre timely brought suit to be permitted to redeem and set aside the tax deed involved in the controversy. He was discharged from military service on December 18, 1945 and started his suit on March 25, 1946, well within the period of four months and 25 days which equals the time between October 6, 1942 and March 1, 1943 referred to in the preceding paragraph.

The District Court in the instant case accepts the Moormans' contention that the tax deed in controversy, which it recites was issued June 4, 1945, is void because it was prematurely issued during the time Moorman was entitled to redeem under said Act. But as we understand the LeMaistre decision of the United States Supreme Court, Moorman, who was discharged on December 20, 1945 would have had two years and seven months and 29 days thereafter to redeem, or until August 17, 1948.

There is nothing in the language of the District Court of Appeal or in the record to show that the Moormans brought any suit to redeem and set aside the tax deed prior to August 17, 1948. In fact, the record reflects no such action by the Moormans claiming that the tax deed is void by virtue of the provisions of the Relief Act until they interposed it in their counterclaim to the Thomas' suit in 1964—fifteen years beyond the time to redeem prescribed by said Act.

We do not believe Florida tax laws relating to the taxation of real property, including provisions for the collection and en-

forcement of such taxes through issuance of tax certificates and tax deeds, should be construed to have been suspended by the Soldiers' and Sailors' Civil Relief Act and thus render void the advertising for and issuance of tax certificates and tax deeds during the periods relief is extended by said Act to soldiers and sailors. As we understand such laws and the holding of the Supreme Court of the United States in LeMaistre, tax certificates and deeds are rendered voidable during the relief periods within which redemption can be made under the Soldiers' and Sailors' Civil Relief Act, but such instruments are not rendered void ab initio merely because they are issued during said periods. The Supreme Court of the United States in LeMaistre gave careful consideration to Florida tax laws relating to the issuance and redemption of tax certificates and deeds and construed them in connection with the Soldiers' and Sailors' Civil Relief Act but did not give them the construction applied by the District Court. The essential purpose of the Relief Act is merely to toll the time of redemption during the relief periods allowed because of military service—not to disrupt all orderly tax enforcement and forfeiture processes by invalidating tax instruments resulting therefrom.

All appellate decisions of our state conflicting with this decision are receded from or are overruled and in particular Burke v. O'Brien, Fla. 1950, 47 So.2d 777. The last cited case is in irreconcilable conflict herewith and unquestionably was the controlling precedent for the District Court's decision herein.

Our decision in this case adopts the construction of the Federal Court concerning the application of the Soldiers' and Sailors' Civil Relief Act in situations arising from military service in World War II. The application of said Act to situations arising from military service in hostilities subsequent to World War II is not necessarily governed by this decision.

The decision of the District Court is quashed with direction that further proceedings be in accord with our opinion and judgment herein.

It is so ordered.

THORNAL, C.J., THOMAS, ROBERTS AND CALDWELL, JJ., concur